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Federal Communications Commission
Office of Secretary

August 12, 1999

CC: 96-45

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St. S.W.
Washington, DC 20554

Dear Ms. Salas:

This letter is to request clarification of the Commission's Part 69 rules regarding the allocation of Corporate Operations Expense.

The Commission's Rules provide for the allocation of Corporate Operations Expenses based on the Big 3 Expense Factor as follows:

> ***§ 69.409 Corporate operations expenses (Accounts 6710 and 6720).***
>
> *All Corporate Operations Expenses shall be apportioned among the interexchange category, the billing and collection category and all access elements in accordance with the Big 3 Expense Factor as defined in § 69.2(f).*

The Commission's definition of the Big 3 Expense Factor is as follows:

> ***§ 69.2 Definitions***
>
> *(f) "Big Three Expense Factors" are the ratios of the sum of Big Three Expenses apportioned to each element or category to the combined Big Three Expenses.*

The Commission's definition of Big 3 Expenses includes Account 6540 as follows:

> ***§ 69.2 Definitions***
>
> *(e) "Big Three Expenses" are the combined expense groups comprising: Plant Specific Operations Expense, Accounts 6110, 6120, 6210, 6220, 6230, 6310 and 6410; Plant*

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> *Nonspecific Operations Expenses, Accounts 6510, 6530 and **6540** [emphasis added], and Customer Operations Expenses, Accounts 6610 and 6620;*

On June 10, 1998 the Commission adopted and released RAO Letter 27 which states the following:

> *Carriers shall record all universal service support payments in Account 6540.*

The Commission did not address in RAO Letter 27 how the corporate expenses associated with the contribution to the universal service fund would be handled. Some parties believe it was the Commission's intent to exclude this 6540 Expense from the Part 69 Big 3 Expenses allocation for the apportionment of Corporate Operations Expenses. If this were the Commissions intent, it would have seemed appropriate for the Commission to include the administrative costs associated with the universal service contribution in account 6540 in the RAO Letter 27. If it were the Commission's intent to leave the account 6540 in the Part 69 Big 3 expense factor, a portion of the Corporate Operations Expenses would be "dragged" by the inclusion of this cost in the factor thus recognizing the administrative costs associated with the contribution.

GVNW therefore requests clarification from the Commission as to whether account 6540 is included in the Part 69 Big 3 Expenses, and if it is not, what is the Commission's intent with regards to the administrative costs associated with the universal service contribution.

If you have any questions about this request, please call me at (503) 612-4400

Sincerely,

Kenneth T. Burchett

Kenneth T. Burchett
Vice President

CC: Ken Moran
Irene Flannery
Jane Jackson
Robert Loube
Steven Burnett
Thaddeus Machcinski

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FTT™

Federal TransTel, Inc.
(800) 933-6600

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AUG 3 1 1999

Federal Communications Commission
Office of Secretary

CC: 96-45

July 14, 1999

Office of the Secretary
FCC
445 12th Street SW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: Universal Service Fund
Petition for Waiver
CC Docket No. 96-45

Dear Sirs:

Enclosed please find the original and 4 copies of

**Petition of Federal Transtel, Inc. for Waiver or, in the alternative, for Reconsideration**

Copies have already been sent to the appropriate personnel. Would you please file this Petition and, as evidence thereof, return this letter marked "filed" to me in the enclosed, self addressed, stamped envelope.

If you have any other questions, please call or write.

Very truly yours,

Tony Ct

TONY CENTER
General Counsel/
Manager Industry Relations
X 7777

TC:akc
Cc: Karl F. Hendrickson, Jr.

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Before the
**FEDERAL COMMUNICATIONS COMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | : | |
| Federal Transtel, Inc. | : | |
| Petition for Waiver of the Universal Service Fund Contribution Requirements Under Sections 54.703, 54.709, and 54.711 of the Commission's Rules | : : : : | File No. ________________ <br> CC Docket No. 96-45 |

**PETITION OF FEDERAL TRANSTEL INC. FOR WAIVER OR, IN THE ALTERNATIVE, <u>FOR RECONSIDERATION</u>**

Tony Center
General Counsel for Federal Transtel, Inc.
Suite 200
5555 Glenridge Connector
Atlanta, GA 30342
Telephone: 800-382-8669
Facsimile: 404-467-0624

July 1, 1999

Before the
**FEDERAL COMMUNICATIONS COMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | : | |
| Federal Transtel, Inc. | : | |
| Petition for Waiver of the Universal Service Fund Contribution Requirements Under Sections 54.703, 54.709, and 54.711 of the Commission's Rules | : : : : | File No. ____________<br>CC Docket No. 96-45 |

**PETITION OF FEDERAL TRANSTEL INC. FOR WAIVER OR, IN THE ALTERNATIVE, FOR RECONSIDERATION**

Federal Transtel, Inc. ("FTT"), by its General Counsel and pursuant to 47 CFR 1.3, hereby requests a waiver from regulations calculating FTT's Universal Service Fund ("USF") contribution for calendar years 1998 and 1999. Specifically FTT seeks relief from the assessment methodology that calculates current year contributions on previous year revenues.

## I. Introduction and Background

FTT primary business is billing and collections. FTT is a billing aggregator. FTT contracts with various LECs for billing and collections. FTT's primary clients are information service providers who sell audiotext services to the general public then send data regarding those sales to FTT. FTT processes that data and sends same to the LECs who then use that data to place charges on local telephone bills. To accommodate some of its clients and, because it is in the telephony industry, FTT also buys and resells long distance services. Buying and reselling long distance services is not FTT's primary business, but it is this portion of FTT's business that makes FTT subject to the USF contribution rules and regulations.

During 1997 and 1998 FTT did not advertise for nor actively engage in direct sales of long distance services. In 1997 FTT's sales from long distance services generated $6,008,812.47 in revenue. In 1998 FTT's sales from long distance services generated $4,289,962.02 in revenue. A major reason for this drop in revenues was the loss (sometimes FTT's choice – nonpayment by a client --, sometimes the client's choice) of long distance clients. Those clients no longer exist for FTT to be able to pass through to them FTT's USF contribution.

The percentage of 1997 revenues FTT must pay as USF charges is 2.16%. If that percentage applied to FTT's 1998 revenues, the USF charge FTT would owe would be 3.02%, an effective 50% rate increase.

## II. Argument

Not until July 1997 did the FCC notify FTT (and others similarly situated) that FTT's 1998 contribution liability would be based on 1997 revenues.[1] At this late date, it was impossible for FTT to identify those clients to whom FTT could pass through the USF charges, develop a formula for passing through those charges, properly notify those clients, and then actually bill those clients for USF charges. The FCC's order was, in effect, a retroactive regulation. No one likes to pay a government imposed charge. Such a charge is accepted with even less happiness when it is retroactive

Also FTT no longer sells long distance traffic to a number of 1997 clients. FTT cannot retroactively recover USF contributions from customers who no longer exist. FTT cannot pass on to 1998 clients those contributions FTT was unable to collect in 1997. Burdening those customers with contributions they did not generate would cause an exodus from FTT's customer base, risking a further downward spiral that would place FTT in an even more perilous position in future years. Therefore FTT is stuck paying government imposed charges that should properly be paid by former clients of FTT.

It must be obvious to even the FCC that when formulating USF contribution rules the FCC anticipated growing or at least stable revenue from year to year. A declining revenue base could not have been an element in formulating the rules.

The FCC may waive any provision of its own rules on its own motion or on petition if good cause is shown.[2] The FCC is required to establish a "predictable" mechanism for calculating USF contributions.[3] A retroactive calculation is not predictable.

The FCC has acknowledged that a waiver is authorized if "special circumstances warrant a deviation from the rules and that such a deviation would better serve the public interest than the general rule."[4] The facts that FTT is not primarily a long distance traffic seller, that FTT encountered a drastic decline in long distance traffic revenues from 1997 to 1998, and that FTT will suffer extreme and unwarranted financial hardship should a waiver not be permitted not only permit but almost compel the granting of a waiver to FTT.

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[1] CC Docket 96-45, Report and Order and Second Order on Reconsideration, FCC 97-253 (rel. July 18, 1997) ("Second Order").

[2] 47 CFR 1.3.

[3] 47 USC 254(d).

[4] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, Order at par. 2 (rel. Sept. 29, 1997).

## III. Conclusion

For all of the foregoing reasons, FTT should be granted a waiver of the rules and regulations that require FTT to pay USF contributions based on previous year revenues and FTT should be allowed to recalculate its 1998 USF contributions. FTT's 1998 contributions should be equitably adjusted

So requested, this 13 day of July, 1999.

**FEDERAL TRANSTEL, INC.**


By: **TONY CENTER**
General Counsel
Suite 200
5555 Glenridge Connector
Atlanta, GA 30342
Telephone: 800-382-8669
Facsimile: 404-467-0624

## DECLARATION OF KARL F. HENDRICKSON, JR.

I, Karl F. Hendrickson, Jr., do hereby declare as follows:

1. I am Vice-President and Chief Operating Officer of Federal Transtel, Inc. ("FTT").

2. I am submitting this Declaration in support of FTT's Petition for Waiver of the Universal Service Fund Contribution Requirements Under Sections 54.703, 54.709, and 54.711 of the Commission's Rules.

3. I have read the Petition and hereby certify under penalty of perjury that the facts contained in said Petition are true and correct to the best of my knowledge and belief.

This 13th day of July, 1999.

Karl F. Hendrickson

KARL F. HENDRICKSON, JR.

## CERTIFICATE OF SERVICE

I, Tony Center, General Counsel for Federal Transtel, Inc., hereby certify that I have on this 13th day of July, 1999, served a copy of the foregoing Petition for Waiver on the following persons by mailing same via first class US mail to

Office of the Secretary (original plus 9)
FCC
445 12th Street SW
Washington, DC 20554

Mr. Jack Zinman
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
Room 5A-663
445 12th Street SW
Washington, DC 20554

Mr. Larry Strickland
Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Ms. Irene Flannery
Chief
Accounting Policy Division
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